

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROY HOSS)	
Claimant)	
VS.)	
)	Docket No. 259,486
STANDARD BEVERAGE CORPORATION)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
and ALLIED MUTUAL INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Respondent and one of its insurance carriers, Liberty Mutual Insurance Company (Liberty), appealed the November 22, 2000 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

In the November 22, 2000 Order, Judge Avery found that claimant sustained a compensable work-related accident on October 1, 1999, and granted claimant medical benefits.

Liberty contends Judge Avery erred by finding claimant's date of accident to be October 1, 1999. Liberty does not dispute that claimant injured his back while working for respondent. But it does dispute the single date of accident selected by the Judge. Liberty argues that claimant has sustained a series of repetitive micro-traumas to his back, and continues to sustain such repetitive injury as claimant continues to perform his regular work. Therefore, it argues that the appropriate date of accident should be the date of the preliminary hearing (November 20, 2000).

After this appeal was filed, Allied Mutual Insurance Company (Allied), another of respondent's insurance carriers, entered its appearance in this claim by filing a brief with the Board. Allied argues that the issue of whether claimant sustained a single accident or a series of accidents is not one appealable from a preliminary hearing order. Therefore, Allied requests that the appeal be dismissed.

Claimant, although requested, did not file a brief in this appeal and, therefore, the Board does not have the benefit of his input.

The only issues before the Board on this appeal are:

1. Is date of accident an issue that may be reviewed from a preliminary hearing order when it only pertains to which insurance carrier is responsible for providing preliminary hearing benefits?
2. If so, did the Judge err by finding that claimant's date of accident was October 1, 1999, rather than finding a series of accidents continuing through the date of the preliminary hearing?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

1. Liberty concedes that claimant injured his back while working for respondent. The only issue raised by Liberty is whether the accident occurred as a single trauma on October 1, 1999, or whether claimant's injuries occurred as the result of a series of repetitive micro-traumas that have continued through the date of the preliminary hearing.
2. Not every alleged error in law or in fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:¹
 - (1) Did the worker sustain an accidental injury?
 - (2) Did the injury arise out of and in the course of employment?
 - (3) Did the worker provide both timely notice and written claim of the accidental injury?
 - (4) Is there any defense that goes to the compensability of the claim?

Additionally, the Board may review those preliminary hearing orders where a judge has exceeded his or her jurisdiction.²

¹ K.S.A. 1999 Supp. 44-534a.

² K.S.A. 1999 Supp. 44-551.

3. Date of accident is not one of the jurisdictional issues listed above, nor was it necessary to determine the date of accident in order to decide any of the jurisdictional issues. Moreover, the Judge did not exceed his jurisdiction by determining claimant's date of accident was October 1, 1999, whether that was a correct finding or not.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

4. The Board concludes that when date of accident is an issue only because it pertains to which insurance carrier is responsible for providing preliminary hearing benefits, that finding is not appealable from a preliminary hearing order. Therefore, this appeal should be dismissed.

WHEREFORE, the Board dismisses the appeal, leaving the November 22, 2000 preliminary hearing Order in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of January 2001.

BOARD MEMBER

c: Roger Fincher, Topeka, KS
Omid Amjadi, Overland Park, KS
Bret C. Owen, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).